

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

# UNITED STATES DISTRICT COURT

for the  
District of Oregon

Case No. 3:20-cv-01967-SI

(to be filled in by the Clerk's Office)

Jorge Lucero

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

UNITED STATES OF AMERICA  
LIEUTENANT EDDIE BAUCE  
OFFICER BRIAN WADE  
DR. ANDREW GRASLEY

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

## COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (Prisoner Complaint)

### NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Jorge Lucero  
 All other names by which  
 you have been known:  
 ID Number #59330-298  
 Current Institution FBI BUTNER Med-1  
 Address P.O. Box 1000  
BUTNER N.C. 27509  
City State Zip Code

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint. whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

**Defendant No. 1**

Name Eddie Bance  
 Job or Title (*if known*) Lieutenant  
 Shield Number  
 Employer FEDERAL BUREAU OF PRISONS  
 Address 27072 Ballston Sw Rd  
Sheridan OREGON 97378  
City State Zip Code

☒ Individual capacity ☐ Official capacity

**Defendant No. 2**

Name Brian Wade  
 Job or Title (*if known*) Officer  
 Shield Number ?  
 Employer FEDERAL BUREAU OF PRISONS  
 Address 27072 Ballston Sw Rd  
Sheridan OREGON 97378  
City State Zip Code

☒ Individual capacity ☐ Official capacity

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

## Defendant No. 3

Name  
Job or Title (if known)  
Shield Number  
Employer  
Address

DR. ANDREW GRASKLEY  
Doctor  
?  
FEDERAL BUREAU OF PRISONS  
27072 BALLSTON SW Rd.  
SHERIDAN OREGON 97378  
City State Zip Code

☒ Individual capacity ☐ Official capacity

## Defendant No. 4

Name  
Job or Title (if known)  
Shield Number  
Employer  
Address

UNITED STATES OF AMERICA  
N/A  
N/A  
UNITED STATES ATTORNEY GENERAL  
WASHINGTON, DC  
WASHINGTON, DC  
City State Zip Code

☐ Individual capacity ☒ Official capacity

## II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☒ Federal officials (a *Bivens* claim) AND Federal Tort Claim (FTCA) Dual  
☐ State or local officials (a § 1983 claim) COMPLAINT § 1346(b)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials? ① Violation of the Eighth Amendment prohibition of CRUEL AND UNUSUAL PUNISHMENT. All 3 defendants (individual capacity) UNDER BIVENS. ② NEGLIGENCE LEADING TO INJURY, MENTAL, AND EMOTIONAL DAMAGES UNDER THE (FTCA) AGAINST THE UNITED STATES OF AMERICA.

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

N/A

### III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☒ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) \_\_\_\_\_

### IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

Federal Correctional Institution (Sheridan, Oregon)

- C. What date and approximate time did the events giving rise to your claim(s) occur?

February 1<sup>st</sup> 2019

- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

See: The following 2 pages

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

See: The following 2 pages

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

\$250,000 for "negligence" under the Federal Tort Claim Act Against the United States and/or \$250,000 for violations of my Eighth Amendment Rights Against all 3 defendants in their individual capacity.

In January of 2018 I was placed in the SHU at FCI Sheridan with 4 other inmates for an assault of another inmate. In April of 2018 while still in the SHU I was interviewed by an FBI investigator and SIS officer Wade. They asked for my cooperation and I complied. I was assured by the 2 officers that any information I gave would be kept "confidential" and not appear in any paperwork. I expressed my concern that if my co-defendants find out I was cooperating I would be seriously hurt or killed by the Sureno 13 prison gang. I also told them that I was no longer a Sureno 13 gang member and should not have been placed on the yard in the first place. I was again assured my safety was not in jeopardy.

In August of 2018 I was returned back to FCI Sheridan after the court process. Upon my intake back to the prison I advised (SIS) Investigator Wade and (SIS) Lieutenant Bance that the information I gave them in confidence was shown to my co-defendants in their "court discovery paperwork". I told them I could not go back to the general population because if the paperwork hit the yard I would be killed by the Sureno 13 gang because of my cooperation. Lieutenant Bance and SIS officer Wade both assured me that they would "intercept the paperwork" if an attempt was made to get into the prison. They then ordered me to go back to the general population or receive a disciplinary infraction and I would be safe on their yard. I complied with their orders and returned to general population.

On February 1st 2019 after (I returned to the general population) I was attacked and severely beaten by several Sureno 13 gang members after they received the court paperwork from one of my co-defendants that had successfully made it into the prison.

I suffered severe injuries to my face and nasal passage. I was taken to the prisons medical ward and placed under the care of Dr. Andrew Grasley. The Doctor downplayed my injuries and failed to transport me to a local hospital for x-rays and

emergency surgery despite the fact I was clearly disfigured with a deviated septum. I was bleeding and clearly had difficulty breathing. I also had a piece of nasal cartilage "literally fall out of my nose". I was then placed in a cell in the SHU and then transferred to a sensitive needs yard at FCI Butner in July 2019. I continued to suffer and on 11-29-2019 I was seen at the Otolaryngology Clinic at FMC Butner whom confirmed I had severe trauma requiring surgery for post traumatic nasal air-way obstruction (Functional Septorhinoplasty and Turbinoplasty). I have been suffering with difficulty breathing and post traumatic stress for 20 months now and have not been able to get surgery due to Covid-19. I also cannot wear a mask to protect myself from Covid-19 because it's too hard to breathe.

FCI Sheridan SIS Lieutenant Bance and SIS Investigator Wade failed to protect me after I advised them about the serious threat to my safety because my name and statement was revealed in court paperwork. The officers knew of the serious threat but disregarded it and ordered me to return to the general population where I was assaulted and suffered serious physical and mental injuries. The officers were negligent in their duties, were deliberately indifferent to my right to be free from cruel and unusual punishment under the Eighth Amendment and had a reckless disregard for my safety. Dr. Andrew Grasley failed to render adequate medical care and transport me for x-rays and emergency surgery causing me 20 months of pain, suffering, and difficulty breathing. Dr. Grasley violated my Eighth Amendment right to adequate medical care and he was negligent in his duties and deliberately indifferent to my serious medical need.

The named Defendants are liable under the "FTCA" for "Negligence" leading to severe injuries, pain, suffering, and mental stress. The named Defendants are also liable under "Bivens" for violation of my constitutional rights under the Eighth Amendment to be free from cruel and unusual punishment.

**VII. Exhaustion of Administrative Remedies Administrative Procedures**

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

FCI Sheridan Oregon

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

THE SAME AS WRITTEN HEREIN



- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☐ Yes

☒ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☒ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance? I filed a grievance when I arrived at FCI Butner. I also filed a Federal Tort Claim. I fully exhausted the grievance procedures as well as the Federal Tort Claim.
2. What did you claim in your grievance? I was cooperating for the prison's investigators/ FBI in court against SUR 13 gang members who assaulted an inmate at FCI Sheridan. When I came back from court I advised Lieutenant Bance and Officer Wade that my cooperation came out in paperwork and they still made me go to general population resulting in my brutal assault/injuries.
3. What was the result, if any? ① Federal Tort Claim was never answered.  
② The Bop central office referred my case to the inspector general (appeal process was completed)
4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.) Tort claim and all administrative remedies fully exhausted (This court has jurisdiction)

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

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*(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)*

#### VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

N/A

2. Court (if federal court, name the district; if state court, name the county and State)

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

N/A

If no, give the approximate date of disposition. \_\_\_\_\_

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

N/A

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) \_\_\_\_\_

N/A

Defendant(s) \_\_\_\_\_

2. Court (if federal court, name the district; if state court, name the county and State)

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

N/A

If no, give the approximate date of disposition \_\_\_\_\_

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

N/A

**IX. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 10/25/20

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Jorge Lucero  
JORGE LUCERO  
#59330-298  
PCI BUTNER Med-1, P.O. Box 1000  
BUTNER N.C. 27509  
City State Zip Code

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
City State Zip Code

Telephone Number

E-mail Address

\_\_\_\_\_  
\_\_\_\_\_